

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Re: Case No. 19-3885, *Brendan Berger v. Natl Bd of Md Examiners*
Originating Case No.: 1:19-cv-00099

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely,

s/Antoinette Macon
Case Manager
Direct Dial No. 513-564-7015

cc: Mr. Richard W. Nagel

Enclosure

No. 19-3885

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**
Jul 20, 2020
DEBORAH S. HUNT, Clerk

BRENDAN J. BERGER,

Plaintiff-Appellee,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

Defendant-Appellant.

ORDER

Defendant National Board of Medical Examiners (NBME) appeals, pursuant to 28 U.S.C. § 1292(a)(1), the district court's order granting plaintiff Brendan J. Berger's motion for a preliminary injunction in this action brought under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. NBME subsequently moved the district court to vacate the preliminary injunction based on new facts that developed after the injunction issued. The district court has entered a ruling indicating that NBME's motion raises a substantial issue on whether Berger suffered or continues to suffer from irreparable harm warranting injunctive relief.

If a timely motion is made for relief that the district court lacks authority to grant because of a pending appeal, the district court may state that it would grant the motion or that it raises a substantial issue. Fed. R. App. P. 12.1. The movant must promptly notify the circuit court, and "the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal." Fed. R. App. P. 12.1(b).

No. 19-3885

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For good cause shown, the motion for a limited remand is **GRANTED**. This case is **REMANDED** to the district court for further proceedings. NBME shall notify the clerk when the district court has entered its decision and indicate what effect the decision has on the disposition of this appeal.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT



Deborah S. Hunt, Clerk